

M/s Amit Enterprises & Anr. v. Canara Bank & Ors.

M/s Amit Enterprises & Anr.

...Appellant

Canara Bank & Ors.

...Respondent

Case No: Appeal No. 85/2012

Date of Judgement: 20/07/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Ajay D.T., Advocate.

For Respondent: None.

Download Court Copy [CLICK HERE](#)

Facts:

M/s Amit Enterprises (1st Appellant) is the proprietary concern of Shri Amit Yeshwanthrao Kadam, and the 2nd Appellant is the mortgagor. Canara Bank (1st Respondent) had advanced a cash credit facility of ₹7 lakhs to the 1st Appellant vide sanction letter dated 16/03/2004. The Appellants defaulted in payment, and the debt was acknowledged on 22/08/2006. Canara Bank issued a recall notice on 04/04/2007 and filed an Original Application (O.A.) No. 87 of 2009 before the Debts Recovery Tribunal, Pune (D.R.T.), against the Appellants and Respondents 2 to 3 as defendants. The 2nd Appellant stood as guarantor and mortgaged a plot of land as security for the loan. The Appellants filed a written statement challenging the authority of the person who signed the application, the jurisdiction of the D.R.T., the rate of interest, and the claim of penal interest charged. The Ld. Presiding Officer found the claim valid and issued a Recovery Certificate for an

amount of ₹13,18,674.25 with interest at 12% per annum. The Appellants moved an application for a one-time settlement (OTS), which was rejected by the bank. The Appellants appealed against the D.R.T.'s order, seeking the benefit of the OTS proposal.

Arguments by Appellants:

The Appellants contended that they are entitled to the benefit of the OTS proposal in accordance with the RBI guidelines. They relied on the Supreme Court's decision in M/s Sardar Associates & Ors. vs. Punjab and Sindh Bank & Ors AIR 2010 SC 218, arguing that Canara Bank is a 'State' within the meaning of Article 12 of the Constitution and is bound to follow the RBI guidelines. They argued that the Supreme Court's later decision in State Bank of India vs. Arvada Electronics Ltd. Civil Appeal No. 6954 of 2022 does not have retrospective effect and is not applicable to the present case. The Appellants argued that the D.R.T. was not justified in not allowing them to perform in accordance with the OTS proposal submitted by them.

Arguments by Respondent Bank:

The Respondents (Canara Bank and others) did not appear before the Appellate Tribunal despite being served with notice and were set ex parte.

Court's Elaborate Opinions:

The Appellate Tribunal observed that in Sardar Associates, the Supreme Court found that the bank had deviated from the RBI guidelines on OTS and held that the RBI guidelines were binding on the bank. However, in the present case, no particular RBI guideline was relied upon by the Appellants seeking the benefit of the OTS proposal. The Appellate Tribunal referred to the Supreme Court's decision in Bijnor Urban Co-operative Bank Ltd., Bijnor & Ors. vs. Meenal Agarwal & Ors (2021) SCC OnLine SC 1255, where it was observed that the grant of the benefit of the OTS scheme cannot be claimed as a matter of right and shall always be subject to fulfilling the eligibility criteria mentioned in the scheme. The Appellate Tribunal found no reason to interfere with the findings of the Ld. Presiding Officer of the D.R.T.

Cases Cited:

M/s Sardar Associates & Ors. vs. Punjab and Sindh Bank & Ors AIR 2010 SC 218

State Bank of India vs. Arvada Electronics Ltd. Civil Appeal No. 6954 of 2022

Bijnor Urban Co-operative Bank Ltd., Bijnor & Ors. vs. Meenal Agarwal & Ors (2021) SCC OnLine SC 1255

Sections and Laws Referred:

Section 20 of the Recovery of Debts Due to Banks & Financial Institutions Act, 1993 (RDDB & FI Act)

Article 12 of the Constitution of India

Section 138 of the Negotiable Instruments Act

Reserve Bank of India (RBI) guidelines on One-Time Settlement (OTS) schemes